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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 EVA L. WATTS,

12 Plaintiff,

13 vs.

14 DECISION ONE MORTGAGE COMPANY,
15 LLC; COUNTRYWIDE HOME LOANS;
16 SAXON MORTGAGE SERVICES, INC.;
17 MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,

Defendants.

CASE NO. 09 CV 0043 JM (BLM)

**ORDER GRANTING MOTION
FOR JUDGMENT ON THE
PLEADINGS BY SAXON
MORTGAGE SERVICES, INC.**

Doc. No. 31

18 On October 9, 2008, Plaintiff Eva L. Watts ("Plaintiff") filed a complaint in the Superior Court
19 of the State of California, County of San Diego, raising claims arising out of a mortgage loan
20 transaction. (Doc. No. 1, Exh. A, "Complaint.") The proceeds of the loan were used to purchase
21 Plaintiff's principal dwelling (the "Property"), which is now subject to nonjudicial foreclosure.
22 Following service of the Summons and Complaint, Defendant Countrywide Home Loans, Inc.
23 ("Countrywide") timely removed the action to federal court on January 12, 2009. (Doc. No. 1.)
24 Defendant Saxon Mortgage Services, Inc. ("Saxon") filed an Answer on January 13, 2009. (Doc. No.
25 6.)

26 Now pending before the court is Saxon's Motion for Judgment on the Pleadings pursuant to
27 Federal Rule of Civil Procedure ("Rule") 12(c). ("Mot.," Doc. No. 31.) Plaintiff has submitted
28 neither an opposition nor a statement of non-opposition. Saxon provided its reply brief on June 19,

1 2009. (Doc. No. 38.)

2 Pursuant to Civ.L.R. 7.1(d), the matter was taken under submission by the court on June 26,
3 2009. For the reasons set forth below, the court **GRANTS** Saxon's Motion for Judgment on the
4 Pleadings.

5 **BACKGROUND**

6 According to the Complaint, Decision One offered Plaintiff a home mortgage loan to finance
7 the purchase of the Property and the loan closed on August 7, 2006. (Compl. ¶¶ 12, 26.) Plaintiff later
8 defaulted on the loan, leading to entry of a Notice of Default on September 2, 2008. (Compl. ¶ 35.)
9 The present status of any pending or completed sale is unclear from the parties' submissions. Against
10 all defendants, Plaintiff asserted federal causes of action under the Racketeer Influenced and Corrupt
11 Organizations Act, 18 U.S.C. § 1961 *et seq.* ("RICO"), the Truth in Lending Act, 15 U.S.C. § 1601
12 *et seq.* ("TILA"), and the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.* ("RESPA").
13 Plaintiff also raised state law claims to quiet title and for fraud, negligent infliction of emotional
14 distress, negligence, cancellation based on impossibility, and slander of title. Plaintiff sought
15 injunctive relief (labeled as a "first cause of action"), damages, attorneys' fees and costs, declaration
16 that the loan and Deed of Trust are null and void, and rescission.

17 The court previously granted a motion to dismiss by Defendants Countrywide and Mortgage
18 Electronic Registration Systems, Inc. ("MERS"), in which Defendant Saxon Mortgage Services
19 ("Saxon") joined, resulting in the dismissal of all claims against these three defendants except for the
20 claims for negligence and negligent infliction of emotion distress against Saxon. Judgment was
21 entered in favor of Countrywide and MERS on April 17, 2009. Following a motion for judgment on
22 the pleadings by Decision One, all claims against that defendant were also dismissed. (Doc. Nos. 26,
23 36.) At this time, the only two remaining claims in this action are the two against Saxon which are
24 addressed by the pending motion. (Doc. No. 31.)

25 **DISCUSSION**

26 **I. Legal Standards**

27 A Rule 12(c) motion challenges the legal sufficiency of an opposing party's pleadings. See
28 FRCP 12(c). As with a Rule 12(b)(6) motion, the court must assume the truthfulness of the material

1 facts alleged in the complaint and must construe all inferences reasonably drawn from the allegations
 2 in favor of the responding party. See Gen. Conference Corp. of Seventh-Day Adventists v. Seventh-
 3 Day Adventist Congregational Church, 887 F.2d 228, 230 (9th Cir. 1989). “Judgment on the
 4 pleadings is proper when the moving party clearly establishes on the face of the pleadings that no
 5 material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law.” Hal
 6 Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1550 (9th Cir. 1989). Thus, judgment
 7 on the pleadings in favor of a defendant is not appropriate if the complaint raises issues of fact that,
 8 if proved, would support the plaintiff’s legal theory. Gen. Conference Corp., 887 F.2d at 230.

9 When an opposing party does not file papers in the manner required by Civ.L.R. 7.1(d)(2), the
 10 court may deem the failure to “constitute a consent to the granting of a motion or other request for
 11 ruling by the court.” Civ.L.R. 7.1(f)(3)(c). Saxon argues Plaintiff offered to “abandon the TILA and
 12 RESPA claims, and the vast majority of the California common law claims.” (Doc. No. 32 at 2-3.)
 13 The court notes the cited comments by Plaintiff were actually made in opposition to Decision One’s
 14 prior motion.¹ However, these statements combined with Plaintiff’s failure to file any opposition to
 15 the present motion do indicate acquiescence to the entry of judgment on her remaining claims.
 16 Nevertheless, the court reviews those claims on their merits to ensure entry of judgment is appropriate.

17 **II. Analysis**

18 “Negligent infliction of emotional distress is not an independent tort; it is the tort of negligence
 19 to which the traditional elements of duty, breach of duty, causation, and damages apply.” Ess v.
 20 Eskaton Properties, Inc., 97 Cal.App.4th 120, 126 (2002)(citing Marlene F. v Affiliated Psychiatric
 21 Med. Clinic, Inc., 48 Cal.3d 583, 588 (1989)). To support each cause of action, then, Plaintiff must
 22 allege a valid legal duty owed to her by Saxon. Here, Plaintiff argues Defendants owed her a
 23 “duty...of due care,” and in particular, a “duty to exercise reasonable care and skill in performing their
 24 duties” for *her* benefit. (Compl. ¶¶ 47, 52.) Generally, barring an assumption of duty or a special
 25 relationship, “financial institutions owe no duty of care to a borrower when the institution’s
 26 involvement in the loan transaction does not exceed the scope of its conventional role as a mere lender

27
 28 ¹Saxon also argues against Plaintiff’s purported request to amend her complaint. This request was made with respect to the prior motion rather than this one. Therefore, Plaintiff has no pending request to amend her complaint and the court declines to discuss the issue.

1 of money.” Nymark v. Heart Fed. Sav. & Loan Ass’n, 231 Cal.App.3d 1089, 1096 (1991). Although
 2 California law imposes a fiduciary duty on a mortgage *broker* for the benefit of the borrower, no such
 3 duty is imposed on a lender or his agent. UMET Trust v. Santa Monica Med. Inv. Co., 140
 4 Cal.App.3d 864, 872-73 (1983); Price v. Wells Fargo Bank, 213 Cal.App.3d 465, 476 (1989)(citing
 5 Downey v. Humphreys, 102 Cal.App.2d 323, 332 (1951)) (“‘A debt is not a trust and there is not a
 6 fiduciary relation between debtor and creditor as such.’ The same principle should apply with even
 7 greater clarity to the relationship between a bank and its loan customers.”).


8 Plaintiff alleges Saxon acted as a “lender and/or loan servicer.” (Compl. ¶ 4.) In its Answer,
 9 Saxon admits it acted as the loan servicer in this transaction. (Doc. No. 6 at ¶ 4.) Acting in this
 10 capacity imposes no legal duty of care on Saxon. Further, Plaintiff has not alleged any duty for Saxon
 11 that has been assumed by Saxon, or created by a special relationship between Saxon and Plaintiff.
 12 Since Plaintiff has failed to allege any facts to support these two claims, Saxon’s motion is granted.

13 CONCLUSION

14 For the reasons set forth above, Saxon’s Motion for Judgment on the Pleadings is **GRANTED**.
 15 (Doc. No. 31.) Accordingly, Plaintiff’s claims for negligence and negligent infliction of emotional
 16 distress against Saxon are **DISMISSED**. The court instructs the Clerk of Court to enter judgment in
 17 favor of Saxon. Further, as this ruling disposes of all remaining claims in the action, the Clerk of
 18 Court is also instructed to close the case file.

19 **IT IS SO ORDERED.**

20 DATED: July 13, 2009

21 
 22 Hon. Jeffrey T. Miller
 United States District Judge